

Senate File 2095 - Introduced

SENATE FILE 2095

BY HART

A BILL FOR

- 1 An Act concerning the employment of unauthorized aliens
- 2 and human trafficking and providing penalties and other
- 3 sanctions and appropriations.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 13.6A Special assistant — human
2 trafficking and related offenses — employment of unauthorized
3 aliens.

4 The attorney general shall appoint a special assistant
5 attorney general for claims who shall, under the direction of
6 the attorney general, investigate and prosecute all claims
7 relating to the crime of human trafficking and related offenses
8 pursuant to sections 710A.2, 710A.2A, 710A.2B, 710A.2C,
9 710A.2D, and 710A.2F and the employment of unauthorized aliens
10 pursuant to section 91F.2.

11 Sec. 2. NEW SECTION. 73A.22 State assistance restrictions
12 — persons employing unauthorized aliens.

13 1. a. A state department, institution, or agency, or any
14 board member, commissioner, director, manager, or other person
15 connected with any such department, institution, or agency,
16 shall not award a contract or provide developmental assistance
17 to an employer as defined in section 91F.1 in which the
18 employer or corporate officer of the employer has been found in
19 violation of section 91F.2 within the past five years.

20 b. For purposes of this section, "*developmental*
21 *assistance*" means any form of public assistance, including
22 tax expenditures, made for the purpose of stimulating the
23 economic development of a corporation, industry, geographic
24 jurisdiction, or any other sector of the state's economy,
25 including but not limited to industrial development bonds,
26 training grants, loans, loan guarantees, enterprise zones,
27 empowerment zones, tax increment financing, fee waivers,
28 land price subsidies, infrastructure constructed or improved
29 for the benefit of a single business or defined group of
30 businesses at the time it is built or improved, matching
31 funds, tax abatements, tax credits and tax discounts of
32 every kind, including corporate, franchise, personal income,
33 sales and use, raw materials, real property, job creation,
34 individual investment, excise, utility, inventory, accelerated
35 depreciation, and research and development tax credits and

1 discounts.

2 2. Any contract or developmental assistance awarded shall
3 provide that if, during the effective period of the contract or
4 developmental assistance, the vendor, contractor, subcontractor
5 or developmental assistance recipient violates the provisions
6 of section 91F.2, the contract or developmental assistance
7 shall be terminated.

8 3. A state department, institution, or agency may enforce
9 its rights under this section by instituting a civil action in
10 district court in this state. In addition, a state department,
11 institution, or agency shall not award a contract or provide
12 developmental assistance to any person that violates this
13 section for a period of five years after the date of the
14 violation.

15 Sec. 3. NEW SECTION. 91F.1 Definitions.

16 As used in this chapter:

17 1. "*Commissioner*" means the labor commissioner.

18 2. "*Employee*" means a natural person who is employed in this
19 state for wages paid on an hourly basis by an employer.

20 3. "*Employer*" means a person, as defined in section 4.1,
21 who in this state employs for wages, paid on an hourly basis,
22 one or more natural persons. An employer does not include
23 a client, patient, customer, or other person who obtains
24 professional services from a licensed person who provides
25 the services on a fee service basis or as an independent
26 contractor, or the state, or an agency or governmental
27 subdivision of the state.

28 4. "*Unauthorized alien*" means a person who is not a citizen
29 or legal resident and who has not been lawfully admitted to the
30 United States for permanent residence or who is not authorized
31 to work in the United States.

32 Sec. 4. NEW SECTION. 91F.2 Unauthorized aliens — employer
33 prohibition.

34 An employer shall not knowingly employ as an employee an
35 unauthorized alien. For purposes of this section, "*knowingly*

1 *employ as an employee an unauthorized alien*” includes cases in
2 which an employer actually knows a person is an unauthorized
3 alien and cases in which any person exercising reasonable care
4 should know from facts and circumstances that a person is an
5 unauthorized alien.

6 Sec. 5. NEW SECTION. **91F.3 Civil penalties.**

7 1. An employer who violates section 91F.2 is subject to a
8 civil penalty of up to one thousand dollars.

9 2. A corporate officer of an employer who, through repeated
10 violation of section 91F.2, demonstrates a pattern of employing
11 unauthorized aliens commits a serious misdemeanor.

12 3. An employer who, through repeated violation of section
13 91F.2, demonstrates a pattern of employing unauthorized aliens
14 may be ordered to pay punitive damages.

15 Sec. 6. NEW SECTION. **91F.4 Duties and authority of the**
16 **commissioner — enforcement by attorney general.**

17 1. The commissioner shall adopt rules to administer and
18 enforce this chapter.

19 2. In order to carry out the purposes of this chapter,
20 the commissioner or the commissioner’s representative, upon
21 presenting appropriate credentials to an employer’s owner,
22 operator, or agent in charge, may do any of the following:

23 a. Inspect employment records relating to the employees of
24 the employer.

25 b. Interview an employer, owner, operator, agent, or
26 employee, during working hours or at other reasonable times.

27 3. If the commissioner has reason to believe that an
28 employer may be in violation of this chapter, the commissioner
29 shall notify the attorney general, and provide the attorney
30 general with any supporting information, for prosecution of the
31 violation by the attorney general.

32 Sec. 7. NEW SECTION. **91F.5 Prohibitions relating to certain**
33 **actions by employees — penalty — civil remedy.**

34 1. An employer shall not discharge an employee or take
35 or fail to take action regarding an employee’s appointment

1 or proposed appointment or promotion or proposed promotion,
2 or regarding any advantage of an employee as a reprisal
3 for a failure by the employee to inform the employer that
4 the employee made a disclosure of information to any law
5 enforcement agency if the employee reasonably believes the
6 information evidences a violation of section 91F.2, 710A.2,
7 710A.2A, 710A.2B, 710A.2C, or 710A.2D.

8 2. Subsection 1 does not apply if the disclosure of the
9 information is prohibited by statute.

10 3. An employer who violates subsection 1 commits a simple
11 misdemeanor.

12 4. Subsection 1 may be enforced through a civil action.

13 a. An employer who violates subsection 1 is liable to
14 an aggrieved employee for affirmative relief, including
15 reinstatement, with or without back pay, or any other equitable
16 relief the court deems appropriate, including attorney fees and
17 costs.

18 b. If an employer commits, is committing, or proposes to
19 commit an act in violation of subsection 1, an injunction may
20 be granted through an action in district court to prohibit the
21 person from continuing such acts. The action for injunctive
22 relief may be brought by an aggrieved employee or the attorney
23 general.

24 Sec. 8. Section 710A.1, Code 2018, is amended to read as
25 follows:

26 **710A.1 Definitions.**

27 As used in [this chapter](#):

28 1. "*Commercial sexual activity*" means any sex act or
29 sexually explicit performance for which anything of value is
30 given, promised to, or received by any person and includes,
31 but is not limited to, prostitution, participation in the
32 production of pornography, and performance in strip clubs.

33 2. "*Corporation*" means the same as defined in section
34 490.140.

35 ~~2.~~ 3. "*Debt bondage*" means the status or condition of a

1 debtor arising from a pledge of the debtor's personal services
2 or a person under the control of a debtor's personal services
3 as a security for debt if the reasonable value of such services
4 is not applied toward the liquidation of the debt or the length
5 and nature of those services are not respectively limited and
6 defined.

7 ~~3.~~ 4. "*Forced labor or services*" means labor or services
8 that are performed or provided by another person and that are
9 obtained or maintained through any of the following:

10 a. Causing or threatening to cause serious physical injury
11 to any person.

12 b. Physically restraining or threatening to physically
13 restrain another person.

14 c. Abusing or threatening to abuse the law or legal process.

15 d. Knowingly destroying, concealing, removing,
16 confiscating, or possessing any actual or purported passport or
17 other immigration document, or any other actual or purported
18 government identification document, of another person.

19 5. "*Foreign corporation*" means the same as defined in
20 section 490.140.

21 ~~4.~~ 6. a. "*Human trafficking*" means participating in a
22 venture to recruit, harbor, transport, supply provisions, or
23 obtain a person for any of the following purposes:

24 (1) Forced labor or service that results in involuntary
25 servitude, peonage, debt bondage, or slavery.

26 (2) Commercial sexual activity through the use of force,
27 fraud, or coercion, except that if the trafficked person is
28 under the age of eighteen, the commercial sexual activity need
29 not involve force, fraud, or coercion.

30 b. "*Human trafficking*" also means knowingly purchasing or
31 attempting to purchase services involving commercial sexual
32 activity from a victim or another person engaged in human
33 trafficking.

34 ~~5.~~ 7. "*Involuntary servitude*" means a condition of
35 servitude induced by means of any scheme, plan, or pattern

1 intended to cause a person to believe that if the person did
2 not enter into or continue in such condition, that person or
3 another person would suffer serious harm or physical restraint
4 or the threatened abuse of legal process.

5 ~~6.~~ 8. "*Labor*" means work of economic or financial value.

6 ~~7.~~ 9. "*Maintain*" means, in relation to labor and services,
7 to secure continued performance thereof, regardless of any
8 initial agreement on the part of the victim to perform such
9 type of services.

10 10. "*Minor*" means a person under the age of eighteen years.

11 ~~8.~~ 11. "*Obtain*" means, in relation to labor or services,
12 to secure performance thereof.

13 ~~9.~~ 12. "*Peonage*" means a status or condition of involuntary
14 servitude based upon real or alleged indebtedness.

15 ~~10.~~ 13. "*Services*" means an ongoing relationship between a
16 person and the actor in which the person performs activities
17 under the supervision of or for the benefit of the actor,
18 including commercial sexual activity and sexually explicit
19 performances.

20 ~~11.~~ 14. "*Sexually explicit performance*" means a live or
21 public act or show intended to arouse or satisfy the sexual
22 desires or appeal to the prurient interest of patrons.

23 ~~12.~~ 15. "*Venture*" means any group of two or more persons
24 associated in fact, whether or not a legal entity.

25 ~~13.~~ 16. "*Victim*" means a person subjected to human
26 trafficking.

27 Sec. 9. NEW SECTION. 710A.2B **Forced labor and services.**

28 1. A person who knowingly subjects, attempts to subject,
29 or engages in a conspiracy to subject another person to forced
30 labor or services by causing or threatening to cause serious
31 physical injury to that other person is guilty of a class "B"
32 felony, except that if that other person is a minor, a person
33 who violates this subsection is guilty of a class "A" felony.

34 2. A person who knowingly subjects, attempts to subject,
35 or engages in a conspiracy to subject another person to forced

1 labor or services by physically restraining or threatening to
2 physically restrain that other person is guilty of a class "C"
3 felony, except that if that other person is a minor, a person
4 who violates this subsection is guilty of a class "B" felony.

5 3. A person who knowingly subjects, attempts to subject,
6 or engages in a conspiracy to subject another person to forced
7 labor or services by abusing or threatening to abuse the law
8 or legal process is guilty of a class "D" felony, except that
9 if that other person is a minor, a person who violates this
10 subsection is guilty of a class "C" felony.

11 4. A person who knowingly subjects, attempts to subject,
12 or engages in a conspiracy to subject another person to
13 forced labor or services by knowingly destroying, concealing,
14 removing, confiscating, or possessing any actual or purported
15 passport or other immigration document, or any other actual or
16 purported government identification document, of that other
17 person is guilty of a class "D" felony, except that if that
18 other person is a minor, a person who violates this subsection
19 is guilty of a class "C" felony.

20 Sec. 10. NEW SECTION. 710A.2C Human trafficking — forced
21 labor and services.

22 1. A person shall not knowingly recruit, entice, harbor,
23 transport, provide, or obtain by any means, or attempt to
24 recruit, entice, harbor, transport, provide, or obtain by any
25 means, another person, with the intent that the other person be
26 subjected to forced labor or services.

27 2. A person shall not knowingly benefit, financially or by
28 receiving anything of value, from participation in a venture
29 that involves a violation of this section.

30 3. A person who violates this section is guilty of a class
31 "B" felony, except that if the other person is a minor, a
32 person who violates this section is guilty of a class "A"
33 felony.

34 Sec. 11. NEW SECTION. 710A.2D Human trafficking — sexual
35 exploitation of a minor.

1 1. A person shall not knowingly recruit, entice, harbor,
2 transport, provide, or obtain by any means, or attempt to
3 recruit, entice, harbor, transport, provide, or obtain by any
4 means, a minor, with the intent that the minor be subjected to
5 sexual exploitation in violation of section 728.12.

6 2. A person shall not knowingly benefit, financially or by
7 receiving anything of value, from participation in a venture
8 that involves a violation of section 728.12.

9 3. A person who violates this section is guilty of a class
10 "A" felony.

11 Sec. 12. NEW SECTION. 710A.2E Sentencing enhancements.

12 1. If a violation of section 710A.2B or 710A.2C results
13 in the death of the person or if the person is kidnapped in
14 violation of section 710.2 or 710.3, the defendant is guilty
15 of a class "A" felony.

16 2. In sentencing a person for a violation of section
17 710A.2B, 710A.2C, or 710A.2D, the court shall sentence the
18 defendant to an additional term of confinement of ten years in
19 cases in which the victim was maintained or held for a period
20 greater than one hundred eighty days or if the offense involved
21 more than ten victims.

22 Sec. 13. NEW SECTION. 710A.2F Corporate liability.

23 If a corporation or foreign corporation is convicted of an
24 offense pursuant to section 710A.2, 710A.2A, 710A.2B, 710A.2C,
25 or 710A.2D, in addition to any other penalties provided in this
26 chapter, the court shall, where appropriate, do any of the
27 following:

28 1. Order the corporation's dissolution or reorganization.

29 2. Order the suspension or revocation of any license,
30 permit, or prior approval granted by a state agency.

31 3. Order the surrender of the corporation's organizational
32 authority if organized under state law or revocation of a
33 foreign corporation's authority to conduct business in this
34 state.

35 Sec. 14. Section 710A.4, Code 2018, is amended to read as

1 follows:

2 **710A.4 Restitution.**

3 ~~The gross income of the defendant or the value of labor or~~
4 ~~services performed by the victim to the defendant shall be~~
5 ~~considered when determining the amount of restitution. In~~
6 addition to any fine or penalty imposed under this chapter,
7 the court shall order a defendant convicted of a violation
8 of this chapter to make restitution for damages resulting
9 directly from the violation, to the victim, pursuant to chapter
10 910, and shall include an additional fine of the greater of
11 either the gross income or value of the victim's labor or
12 services or the value of the victim's wages of not less than
13 the federal minimum wage under the federal Fair Labors Standard
14 Act or under the state's minimum wage under section 91D.1, as
15 applicable.

16 Sec. 15. Section 915.51, Code 2018, is amended to read as
17 follows:

18 **915.51 General rights of human trafficking victims.**

19 ~~Victims of human trafficking, as defined in [section 710A.1](#),~~
20 ~~shall have the same rights as other victims of a crime,~~
21 ~~including the right to receive victim compensation pursuant to~~
22 ~~[section 915.84](#), regardless of their immigration status.~~

23 1. In addition to other victim rights provided in this
24 chapter, including the right to receive victim compensation
25 pursuant to section 915.84 and the right to exert victim
26 counseling privileges pursuant to section 915.20A, victims of a
27 crime described in section 710A.2, 710A.2A, 710A.2B, 710A.2C,
28 or 710A.2D shall have the following rights without regard to
29 their immigration status:

30 a. The right to receive prompt medical care including mental
31 health care, food, shelter, and other assistance, if necessary.

32 b. The right to have access to legal assistance and
33 translation services, if necessary.

34 c. The right to receive reasonable police protection if
35 a victim's safety is at risk or if there is any danger of

1 additional harm, including measures to protect victims and
2 their family members from intimidation and threats of reprisals
3 from traffickers and their associates and ensuring that the
4 names and identifying information of victims and their family
5 members are not disclosed to the public.

6 2. The departments of human services, human rights, public
7 health, public safety, justice, and other state agencies shall
8 provide the requisite services to assist in the administration
9 of this section.

10 EXPLANATION

11 The inclusion of this explanation does not constitute agreement with
12 the explanation's substance by the members of the general assembly.

13 This bill relates to employment of unauthorized aliens and
14 human trafficking and related offenses and provides penalties.

15 New Code section 73A.22 is created to prohibit state
16 entities from awarding a contract or providing developmental
17 assistance to a person who violates the provisions of the bill
18 concerning the employment of unauthorized aliens as established
19 in new Code section 91F.2. The bill defines "developmental
20 assistance" as any form of public assistance, including tax
21 incentives, grants, or other subsidies. The bill provides that
22 a person violating this new provision shall have their contract
23 or developmental assistance terminated. The bill grants state
24 entities the right to enforce their rights in district court
25 and provides that a person violating this provision shall be
26 prohibited from receiving a state contract or developmental
27 assistance for five years.

28 The bill creates new Code chapter 91F prohibiting employers
29 from employing unauthorized aliens. The bill defines
30 "unauthorized alien" as any person who is not a citizen or
31 legal resident and who has not been lawfully admitted to the
32 United States for permanent residence or who is not authorized
33 to work in the United States. An "employer" is any person who
34 employs for wages, paid on an hourly basis, one or more natural
35 persons. The bill prohibits employers from knowingly employing

1 an unauthorized alien. The bill provides that a violation can
2 occur in cases in which an employer actually knows a person
3 is an unauthorized alien as well as a situation in which any
4 person exercising reasonable care should know from facts and
5 circumstances that a person is an unauthorized alien. The
6 bill provides that a violation of this Code chapter is subject
7 to a civil penalty of \$1,000 and a corporate officer of an
8 employer who, through repeated violations of the Code chapter,
9 demonstrates a pattern of employing unauthorized aliens,
10 commits a serious misdemeanor. An employer who demonstrates
11 a pattern of employing unauthorized aliens may be ordered to
12 pay punitive damages. The bill further authorizes the labor
13 commissioner within the department of workforce development to
14 adopt rules to administer and enforce this new Code chapter and
15 grants the commissioner the authority to investigate employer
16 records and to interview employees. The bill provides that the
17 commissioner shall forward any suspected violations of this
18 Code chapter to the attorney general for prosecution. The
19 bill further provides that an employer shall not discharge
20 an employee from or take or fail to take action regarding an
21 employee's appointment or proposed appointment, promotion or
22 proposed promotion, or regarding any advantage of an employee
23 as a reprisal for a failure by that employee to inform the
24 employer that the employee made a disclosure of information to
25 any law enforcement agency if the employee reasonably believes
26 the information evidences a violation of Code section 91F.2,
27 710A.2, 710A.2A, 710A.2B, 710A.2C, or 710A.2D. An employer
28 who violates the provisions of this Code chapter is liable
29 to an aggrieved employee for affirmative relief including
30 reinstatement, with or without back pay, or any other equitable
31 relief the court deems appropriate, including attorney fees and
32 costs. In addition, an action for injunctive relief may be
33 brought by an aggrieved employee or the attorney general.
34 The bill provides that a person who knowingly subjects,
35 attempts to subject, or engages in a conspiracy to subject

1 another person to forced labor or services by causing or
2 threatening to cause serious physical injury to that person, by
3 physically restraining or threatening to physically restrain
4 another person, by abusing or threatening to abuse the law
5 or legal process, or by destroying, concealing, removing,
6 confiscating, or possessing any actual or purported passport or
7 other immigration document, or any other actual or purported
8 government identification document, of another person is guilty
9 of the crime of forced labor and services and is subject to a
10 class "B" felony, a class "C" felony, or a class "D" felony,
11 depending upon the circumstances of the offense. A class "B"
12 felony is punishable by confinement for no more than 25 years,
13 a class "C" felony is punishable by confinement for no more
14 than 10 years and a fine of at least \$1,000 but not more than
15 \$10,000, and a class "D" felony is punishable by confinement
16 for no more than five years and a fine of at least \$750 but not
17 more than \$7,500. The bill provides sentencing enhancements
18 for a crime involving a minor victim, depending on the
19 circumstances of the offense, ranging from a class "A" felony,
20 punishable by confinement for life without the possibility of
21 parole, to a class "C" felony.

22 The bill provides that a person who knowingly recruits,
23 entices, harbors, transports, provides, or obtains by any
24 means, or attempts to recruit, entice, harbor, transport,
25 provide, or obtain by any means, another person, with the
26 intent that the person be subjected to forced labor or
27 services, or a person who knowingly benefits, financially or by
28 receiving anything of value, from participation in a venture
29 that involves forced labor or services, is guilty of a class
30 "B" felony, except if the person being trafficked is a minor, a
31 person who commits either act is guilty of a class "A" felony.

32 The bill further provides that a person who knowingly
33 recruits, entices, harbors, transports, provides, or obtains by
34 any means, or attempts to recruit, entice, harbor, transport,
35 provide, or obtain by any means, a minor, with the intent that

1 the minor be subjected to sexual exploitation in violation of
2 Code section 728.12, Iowa's sexual exploitation of a minor
3 statute, or a person who knowingly benefits, financially or by
4 receiving anything of value, from participation in a venture
5 that involves a violation of Code section 728.12, is guilty of
6 a class "A" felony.

7 The bill provides sentencing enhancements for the crimes
8 of forced labor and services and human trafficking in forced
9 labor and services. The bill provides that if the commission
10 of any such offense results in the death of the person or if
11 the person is kidnapped, the defendant is guilty of a class "A"
12 felony.

13 The bill provides that if a corporation is convicted of
14 the crimes of forced labor and services, human trafficking
15 in forced labor and services, or human trafficking in the
16 sexual exploitation of a minor, the court shall order the
17 corporation's dissolution or reorganization; order the
18 suspension or revocation of any license, permit, or prior
19 approval granted by a state agency in Iowa; or order the
20 surrender of the corporation's charter if organized under state
21 law or revocation of the foreign corporation's certificate to
22 conduct business in the state.

23 The bill provides that a victim under the bill shall receive
24 restitution pursuant to Code chapter 910 for damages resulting
25 directly from a violation, and the restitution shall include
26 a fine of the greater of either the gross income or value of
27 the victim's labor or services, or the value of the victim's
28 wages of not less than the current minimum wage under the
29 federal Fair Labor Standards Act or under the Iowa minimum wage
30 pursuant to Code section 91D.1.

31 The bill provides that in addition to other victim rights
32 provided in Code chapter 915, including the right to receive
33 victim compensation pursuant to Code section 915.84 and the
34 right to exert victim counseling privileges pursuant to Code
35 section 915.20A, victims shall have the right to receive prompt

1 medical care including mental health care, food, shelter, and
2 other assistance; the right to have access to legal assistance
3 and translation services; and the right to receive reasonable
4 police protection; and including ensuring that the names and
5 identifying information of victims and their family members are
6 not disclosed to the public if a victim's safety is at risk or
7 if there is any danger of additional harm, without regard to
8 their immigration status.

9 The bill authorizes the attorney general to appoint a
10 special assistant attorney general who shall, under the
11 direction of the attorney general, investigate and prosecute
12 all claims relating to the crime of human trafficking and
13 related offenses and the employment of unauthorized aliens and
14 appropriates up to \$100,000 from the state general fund to the
15 department of justice for the fiscal year beginning July 1,
16 2018, and ending June 30, 2019, to be used by the department of
17 justice for such purposes. Notwithstanding Code section 8.33,
18 appropriated moneys that remain unencumbered or unobligated at
19 the close of the fiscal year do not revert but remain available
20 for expenditure for the purposes designated until the close of
21 the succeeding fiscal year.